NO. 11404

United States Circuit Court of Appeals

For the Ninth Circuit

EDWARD C. COMMERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Brief of Appellant

Upon Appeal from the District Court of the United States for the District of Montana

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STATUTES CITED

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STATEMENT OF FACTS

This is an action brought by Appellant for a declaratory judgment construing the Constitution of the United States and certain of its amendments, and declaring the rights of Appellant and others similarly situated. The petition alleges:

The citizenship of petitioner, the inception of World War II, the enactment of Selective Service Acts by Congress, the drafting of about fifteen million of our young men for military service;

Pars. I to III, Tr. pp. 2, 3

The drafting of petitioner on October 19, 1942, and his service on active duty in the military forces of Respondent until his discharge on August 6, 1945 (Par. IV, Tr. p. 4); the details of his service (Par. V to XII, Tr. pp. 4-6); injuries received and sickness incurred in line of duty (Par. X to XIII, Tr. pp. 6, 7);

The total disability of petitioner is alleged (Par. XIV and XV, Tr. pp. 7, 8); that respondent has paid no part of said damage and refuses to recognize any obligation to petitioner or to the others of the two or three million men disabled in said war and denies any right of petitioner to compensation for his loss of ability to carry on, making only some charitable payments;

Par. XVI, Tr. p. 8

That respondent is amply able to pay (Par. XVII, Tr. p. 9);

That the body of petitioner was taken for a public use and so used by respondent and has been damaged in such service;

Par. XVIII, Tr. p. 9

The adoption of the Declaration of Independence (Par. XIX, Tr. pp. 9, 10); of the Constitution of 1787 (Par. XX, Tr. p. 10); of the 5th and 7th Amendments in 1789 (Par. XXI, Tr. pp. 10, 11); and of the 13th Amendment 1861 to 1865 (Par. XXII, Tr. p. 11) are alleged;

It is alleged that petitioner's body is his own and not the property of the respondent or of any other group of its citizens; that the citizens who fight do not become the slaves, serfs or chattels of those who do not fight; that they are entitled to just compensation and to due process of law guaranteed by the Constitution;

Par. XXIIII, Tr. pp. 11, 12

Just compensation is defined (Par. XXIV, Tr. p. 12);

It is alleged that all laws of Congress now in force are based upon the theory that those who fight are the slaves, serfs or chattels of those who do not fight, to be sacrificed in the common defense, without legal obligation, and that payments made to them is gratuity or common charity; that charity does not pay debts;

Par. XXV, Tr. pp. 12, 13

That the earning power of man belongs to him and is property (Par. XXVI, Tr. p. 13); that the expendi-

ture of the bodily integrity of man and of his earning power in battle or in any other type of military service in time of war is the taking of private property for a public use, for which respondent is required by the 5th amendment to make just compensation, the same as for earning power in the form of ships, etc. (Par. XXVII, Tr. p. 13);

The unconstitutionality of the Economy Act of March 20, 1933, Public No. 2, 73rd Congress, 48 Stat. 11, is alleged;

Par. XXVIII, Tr. pp. 13, 14

That the constitutional provisions referred to in the petition are enforceable by the courts without the sanction of Congress, and that no consent to sue other than that implied in the 5th Amendment is necessary;

Par. XXIX and XXX, Tr. p. 14

That unless this Honorable Court grant the relief prayed for petitioner will be denied his constitutional rights;

Par. XXXI, Tr. p. 15

Prays for judgment construing the constitution and adjudging

1. That the taking of petitioner's body was the taking of private property for public use;

2. That the United States is obligated to make just compensation for war disabilities;

3. That such war disabled have a constitutional right to due process and other remedies;

4. That the United States has consented to be sued upon these claims;

5. For further relief.

Tr. pp. 15, 16

Respondent moved to dismiss upon the grounds, first, that the amended petition did not state facts to warrant recovery, and second, that the respondent had not consented to be sued.

Tr. p. 17

The District Court, after hearing argument, sustained the motion, filed its opinion (Tr. pp. 18-34) and entered judgment dismissing the cause (Tr. p. 35).

Petitioner filed in the district court his notice of appeal (Tr. p. 37), his bond for costs on appeal (Tr. pp. 38, 39), his designation of the record (Tr. p. 40), and in this Court filed his designation of points to be relied upon and the portion of the record to be printed (Tr. pp. 42-44).

The foregoing statement of facts is made for use in connection with the jurisdictional statement and in the main argument.

STATEMENT OF PLEADINGS AND OF STATUTES SHOWING JURISDICTION OF THE DISTRICT COURT AND OF THIS COURT.

The amended petition states a cause of action upon petitioner's construction of the constitution. Petitioner,

however, instead of asking ultimate relief in the form of a judgment, asks for a declaratory judgment construing the constitution and defining the rights of petitioner and of all others similarly situated.

Reference is made to the foregoing statement of facts.

Jurisdiction is conferred upon the District Court in the first instance and upon this Court upon appeal by the provisions of

Section 400, Title 28, USC.

That section gives the court jurisdiction to declare the law, "whether or not further relief *is or could be prayed.*"

The statements of the Supreme Court in the case of

Perry vs. U. S.
294 U. S. 330
79 L. ed. 912,

would seem to conclude the question of the power and the duty of this court to declare upon the substantive rights of disabled veterans under the constitutional provisions, even though it should decide that the alleged immunity from suit exists:

> "The fact that the United States may not be sued without its consent is a matter of procedure *which could not affect the legal and binding character of its contracts.* * * * *The contractual obligation still exists,* and despite infirmities of procedure, *remains binding upon the conscience of the sovereign.*"

So, if the basic obligation exists in the instant case, it is the duty of the Court to so declare; and perhaps, with the obligation established, the Congress, if it has a conscience, or perhaps in fear of adverse public opinion should it attempt to repudiate a constitutional obligation, might clothe the right with a remedy, if such action is necessary, which we deny.

SPECIFICATION OF ERRORS

1. The District Court erred in sustaining the first ground of said motion to dismiss;

2. The District Court erred in sustaining the second ground of said motion to dismiss;

3. The District Court erred in sustaining said motion to dismiss in its entirety;

4. The District Court erred in entering judgment dismissing this cause;

5. The District Court erred in not overruling the first ground of said motion to dismiss;

6. The District Court erred in not overruling the second ground of said motion to dismiss;

7. The District Court erred in not overruling said motion to dismiss in its entirety.

PROLOGUE

The purpose of this action is to ascertain whether a disabled war veteran has any rights under the constitu-

tion when his right to live is at stake, or whether the constitution was intended to apply to everyone but the disabled veteran.

The amended petition presents the following substantive propositions:

1. That this country owes an obligation under the constitution to compensate its disabled war veterans.

2. That such war disabled have the right, in case of dispute, to the benefit of the decent processes provided by the constitution for the trial of such obligation before independent courts not controlled by the political branches of government.

There is no middle ground. We owe this obligation or we owe nothing.

Congress says we owe nothing, and in legislation expresses this sentiment in accordance with the following propositions:

1. That this country owes nothing to its war disabled.

2. That whatever Congress does for them is common charity.

3. That the disabled soldier is not entitled to a trial, before independent tribunals, of the question how much of his life has been taken for a public use.

All of which means that Congress acknowledges no legal obligation to even remove the wounded from the battlefield or to bury the dead.

Acting upon this archaic and perverted theory, Congress, by the Economy Act of 1933, repealed all laws providing compensation to war disabled veterans, from the Spanish-American War down, cancelled the insurance contracts issued under the War Risk Act, under which thousands of war disabled were drawing payments, and placed the entire control of the destinies of our war disabled in the hands of the Veterans Administrator, and made his every decision, upon questions of *law or fact*, final and conclusive, and prohibited all courts from reviewing such decisions, by mandamus or otherwise.

Under a principle of law of universal application, any aggrieved person, even the inmate of a poor house or of a penitentiary, may have reviewed, by mandamus or other appropriate writ, errors committed by any board, bureau or commission in construing the law.

The Veterans Administrator, however, the autocrat, or his subordinate employees, may, under the provisions of the Economy Act, arbitrarily misconstrue any act of Congress, and the disabled veteran who is injured cannot appeal to any court or other official for a proper construction of the law.

No more autocratic institution ever existed in any of the monarchies or fascist states of Europe. History shows that a political dictator is always a tyrant, and experience with this dictator shows that the pattern has not changed.

Were a similar system of mock "due process of law" applied to all other classes of our citizens we would have

rebellion; rebellion warranted by the preamble to the Declaration of Independence.

This discrimination cannot be justified as an exercise by Congress of a proper legislative discretion. It can be justified only upon the theory that an 18-year-old boy who was blinded and suffered multiple amputations while defending this country is not entitled to the rights which are accorded to the tramp, to the criminal, to the enemy alien, or to the harlot.

It is not legislative discretion which impels Congress to legislate for a large and powerful group, the taxpayer, at the expense of a small and non-influential group, the disabled veteran, it is simply brutal, Hitlerian tyranny.

It was to prevent just such abuses that the Bill of Rights was adopted, and its enforcement entrusted to the judicial branch, an independent department of government.

If the judicial department, however, abdicates its prerogatives, and disregards its sacred trust, and permits Congress, under the guise of legislative discretion, to roam at large over the entire field of human rights, what recourse has the oppressed?

> "It seems to be opposed to all the principles upon which the rights of the citizen, when brought in collision with the acts of the government, must be determined. In such cases there is no safety to the citizen, *except in the protection of the judicial tribunals.*"

U. S. vs. Lee
16 Otto 196
27 L. ed. 171

As so aptly stated by James Wilson, a member of the Constitutional Convention of 1787:

> "Despotism comes on mankind in different shapes, sometimes in an Executive, sometimes in a military one. Is there no danger of a Legislative despotism? Theory and practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability."

It is because of its success in maintaining its disregard of the rights of disabled veterans that Congress makes its niggardly allowances to them. Under the present system, inaugurated and perpetuated by the Economy Act, allowances are not based on the cost of decent living, but like all other charitable contributions are no more than enough to keep body and soul together, with the necessary aid in many cases of charitable minded individuals and organizations.

If the recognition of our obligation to these disabled, and provision for the ordinary processes of determining the existence and extent of this obligation in the individual cases, would not involve larger outlay, what point is there in insulting the veteran by classing him as a mendicant instead of paying him as a matter of right?

No, the only excuse we can find for the theory of

gratuity is the evasion of the real cost of war, in the lives and earning power of the men who fought it.

If we couldn't afford to pay the cost of war, why didn't we let the Japs and Germans have us? The boys who fought the war didn't ask for a war, nor could they afford to lose their lives, their limbs or their health in defending us. We sent them out; and we now try to evade payment of *the cost to them* by repudiating not only a legal debt but a debt of honor of the highest grade. Not only that, we place them in a class below every other citizen in constitutional and decent rights.

The same persons who will agree with the ideology of Congress will view with complacency the payment of two or three hundred billions of profit to those who produced war material, profits made because the blood of American youth was being spilled on battlefields on five continents and the seven seas.

We are not waving the flag; we are just waving a million bloody uniforms.

The men who suffer from the wrongs of the present system are those who make their living by manual effort, and have not the political or economic power to protect themselves; and the constitution was designed primarily to protect the weak, not the strong, as the strong have sufficient political influence to more than protect themselves.

Since the beginning of organized government the man of the rank and file has been regimented and

pushed around to suit the whim of his masters. Formerly he was the property of the King, without rights, expendible without responsibility; and in this professedly free and democratic country this practice continues. Congress regards him as a tool, in effect a slave, *expendible in war without obligation to recompense.*

A soldier serves his time in the army in time of war, comes out disabled, and becomes a ward of the government.

A slave is disabled in his master's service, and he becomes a ward of his master.

Neither has any legal or constitutional rights with reference to his disabilities.

The soldier, being thus expendible without obligation to recompense, is in the same category as a disabled slave.

The constitution and its amendments were supposed to do away with the ideologies and the practices of monarchy, and to recognize the sovereign rights of the individual, no matter how lowly he may be.

We take for public use the ablebodied from every walk of life; and under that constitution we become responsible to them just as we would have become responsible to the owner of a ship, a plane, a gun, or any other paraphernalia of war.

We did not, however, take the ship, the plane or the gun under this power of eminent domain. We induced the producers to make them for us, at high salaries, high

wages, and fabulous profits, largely with cost-plus contracts, an incentive to build up costs so as to increase the plus; with the result that these producers now hold public bonds which constitute a mortgage of over 200 billion dollars upon this country, a mortgage which represents but a part of the profit the home front made out of this war; a mortgage we expect the returning veteran to help to pay.

If it is the duty of the ablebodied to give their bodies without recompense, then *it was the duty of the government to take what insensate material it needed, without payment of profit;* and the people of this country have thus been despoiled of the two or three hundred billion dollars of profit which was paid to these producers.

We boast of our equality, our free institutions, and our judicial system. Wonderful institutions for those who are permitted to enjoy them; wonderful for our enemies.

We freely permit the atmosphere of the sacred precincts of the Temple of Justice to be polluted by the effluvium of the foul reptile Yamashita, the Tiger of Malaya, hear him on the merits and permit him to invoke the very constitution he sought to destroy, lean over backwards to show how generous we are to our enemies, and at the same time cast the American youth who defeated Yamashita into outer darkness—bar him from these same courts upon a mere showing that he is a war veteran seeking compensation for disabilities

suffered by him in defending that constitution against the Yamashitas, the Mussolinis and the Hitlers.

Many years ago Congress opened the doors of our courts to every financial interest, war profiteers, and even aliens, and recently has extended the privilege of suing the United States in those courts upon practically every claim which could be asserted against the government, by any one *except the disabled soldier.*

It is no answer to this proposition to say that these war disabled are accorded due process of law because they may go before the kangaroo courts of the autocrat, the Veterans Administrator, a group of employees of the political branch of the debtor government, a political eleemosynary institution responsive to every suggestion from their political masters; with power to misconstrue the law in any way necessary to defeat the claim of a veteran, and the courts prohibited from reviewing their decisions, *even upon questions of law.*

If that is due process, *why not abolish our entire expensive judicial system and let low paid bureau clerks, without judicial training*, dispense "justice" for everyone?

No, that would be an injustice to the legal talent which occupies the benches of our federal courts, to say that an ordinary clerk is as competent to administer justice as the judges of our federal courts.

Yet that is just what they say with reference to the veteran; either that the veteran *is not entitled to justice,*

or that his case is as ably and as justly tried by a low paid politically controlled clerk of the Veterans Administration, without legal training or experience, as it would be tried by judges of proven training and legal ability and years of experience.

The theory of immunity of the United States from suit without the consent of Congress is a grotesque joke.

The uninitiated may think that the theory of immunity rests upon the principle that the person of the sovereign (a thing apart from and superior to the people) is too sacred to be brought into a court of justice at the suit of a common citizen, unless Congress permits it.

Congress has no sense of delicacy in this matter, for it now permits a harlot, who claims that the military police were unnecessarily rough and destructive in raiding her house of ill fame in an out-of-bounds section of a town occupied by troops, to sue the United States of America for damages to her property and her business.

No, there is no question of delicacy involved in this asserted defense. The only explanation is that it is used simply in an attempt to evade a just obligation established by the people themselves through the amendments to the constitution. Congress is evidently afraid that courts and juries would do them justice.

Wouldn't this story sound funny to an American youth who is studying the framework of our institutions of freedom—that the United States may be sued by a harlot but not by a disabled war veteran?

Our armies are raised by the power of government

to mobilize the energies of the nation, manpower and material, for defense.

What rule of logic or of common sense says that, except for the determination of what is just compensation, our obligation to pay for one kind of private property is different than our obligation to pay for another kind of private property; that we must pay fabulous sums for insensate property, but must not pay for human property and earning power, when both kinds of property are taken under the same extraordinary power and for the same purpose?

That if we commandeered a B-29, and drafted the body of our neighbor's boy to fly it over Tokyo, and both were shot up, we would be compelled under the Fifth Amendment to pay for the damage to the plane but would be under *no* obligation to pay for the damage to the body of the boy?

The macabre theory of Congress that these men have by their very service in war excluded themselves from the benefits of the constitution is a perversion of every principle of logic, of democracy, and of common decency, and violative of every constitutional principle.

For the moment the answers to the following questions hang upon the decision of this Court:

Have we deified wealth and set it above human life?

Are we a democracy, or just another political oligarchy?

Was the constitution made for everyone in the world except only the men who contributed of their bodies to its perpetuation?

ARGUMENT

For the purposes of the motion to dismiss, all of the facts pleaded in the amended complaint must be taken as true.

Our argument, therefore, will be based upon the premise that the petitioner was conscripted, served, and was injured as is alleged in detail in the petition, that the respondent repudiates its obligation to him, and that his body and its earning power are property and belong to him.

The legal issues involved in this appeal are as follows:

1. That a citizen disabled in war service is entitled to contribution, under common law principles and under the compact we call the Constitution, for the loss of bodily integrity and impairment or loss of earning power.
2. That loss of bodily integrity and impairment or loss of earning power suffered by a conscripted citizen in war service is private property taken for public use under the last clause of the Fifth Amendment.
3. That as a corollary to the foregoing propositions, our war disabled are entitled to the due process of law guaranteed by the Bill of Rights.
4. That the war disabled have the right to sue the United States in the courts of the United States, without express sanction of Congress, and in spite of its denial of that right.

I.

A CITIZEN DISABLED IN WAR SERVICE IS ENTITLED TO CONTRIBUTION UNDER COMMON LAW PRINCIPLES AND UNDER THE COMPACT WE NOW CALL THE CONSTITUTION FOR THE LOSS OF BODILY INTEGRITY AND IMPAIRMENT OR LOSS OF EARNING POWER.

This branch of the argument involves a discussion of the principles of free government and of sovereignty, as applied to a democracy.

A democracy operating under a republican form of government—the only form of government applicable to a democracy—is simply a partnership in which the partners have agreed to surrender proportionately of their income and property for the purpose of maintaining government, and to refrain from infringing upon the rights of other members of that society.

However, an implied provision of this partnership compact is that one who contributes *more* than his proportionate share to the common good or to the common defense, whether in bodily integrity and earning power or in insensate property, be compensated for such excess.

In this respect the country itself, its products, the tangible property of the people, and their lives and liberties, constitute the partnership assets, and constitute a fund within the meaning of the decision of the Supreme Court of the United States in

Trustees vs. Greenough
105 U. S. 527
26 L. ed. 1157

There the Court said, and in doing so but stated a natural principle of equity, that one who, for the protection of a fund in which many are interested, contributes more than his proportionate share to its protection, is entitled to reimbursement from the fund.

Congress concedes that the man who so contributes *insensate* property in excess of his proportionate share is entitled to contribution for its value, plus a good profit, but says that the man of the rank and file who contributes of his body and of his earning power owes the strange duty of thus sacrificing his most valuable property without recompense.

Such a principle is consistent with the tyrannies of the dark ages, but is alien to a modern democracy, where the rights of the individual are paramount.

That principle can apply only to a sovereignty not of the people, a sovereignty which does not exist in this country.

The idea seems to prevail among lawmakers and other members of our central government, and among citizens generally, that there is some sovereign power, separate and apart from and superior to the people, to which the individual citizen owes blind allegiance, and that the citizen owes the duty to gratuitously sacrifice his body in war at the behest of this mysterious and heartless sovereign.

If this theory be correct, then why does not the war emergency require that ordinary property be also yielded to the sovereign for war purposes without recompense, or at least without profit?

Could it be that the application to ordinary property of the principle which actuates Congress would impinge upon interests too great and too powerful; and that the plan is to use the money which would be required to adequately compensate the man of the rank and file for the damage done to his body in winning a war to pay the tycoon for his insensate property, plus a wide margin of profit?

Certainly the exemption of ordinary property rights from the ruthless exercise of the right of survival is not justified by any rule of logic, nor is it consistent with the principle of democratic equality.

In the political and intellectual confusion of the last few decades we seem to have forgotten the basic principles of democracy.

The gradual centralization of power at the seat of government and the multiplication and extension of federal controls into every nook and corner of the country has gradually created the impression that these tentacles of power emanate from a sovereign power apart from the people, a sovereignty which resides in Washington.

This idea, of course, is utterly fallacious. While the sovereignty of the people of the United States is given effect through the *governmental agencies* established at Washington, and operating under powers delegated to them by the states, ultimate sovereignty was never delegated to the federal government, but is in the individual citizen. This principle is clearly exemplified by the

language of the Tenth Amendment to the Federal Constitution:

> "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

That amendment clearly distinguishes the difference between the United States the government, operating under delegated powers, and the United States the sovereign people.

When the government thus established to handle the affairs of all the people, and acting, not as a sovereign, but as the agent of the sovereign people, conscripted 15 million citizens into the service to defend this country, the 125 million who remained at home and controlled the machinery of government did not become the sovereign masters of the 15 million who were sent out. The latter were still sovereigns, equally with those who remained at home.

Any other theory would make those who fight the chattels of those who do not fight, an idea which is repugnant to every democratic principle.

If in an association of a dozen persons an emergency arose which threatened the lives and property of all twelve, and ten of them pushed the other two off the deep end and made them defend the association and its property, and if one of these two were killed and the other disabled, would any court in Christendom say that the disabled survivor and the dependents of the

dead would not have a legal claim against the ten for contribution?

And the same principle applies in equal force to the disabled and the dependents of the dead when 125 million people push the other 15 million off the deep end. This is the basis of the compact we call the Constitution; and we cannot evade the obligation by calling the association the United States of America, instead of the "Association of the American People," and hiding behind this imaginary sovereignty.

To summarize:

1. The constitution is a partnership compact.

2. Under that compact the principle of contribution protects the members of our society who contribute more than their proportionate share to the common good, or to the common defense.

3. The only sovereignty in the United States is the aggregate sovereignty of *all* the sovereign people, and that sovereignty cannot be used to give one group of sovereigns an unconscionable advantage over another group of sovereigns.

4. This sovereignty has no play in the question of the contribution by a part of the people of more than their proportionate share, except in the exercise of the taxing power for the purpose of reimbursing for such excess contribution.

II.

IMPAIRMENT OF BODILY INTEGRITY AND LOSS OR IMPAIRMENT OF EARNING POWER SUFFERED BY A CONSCRIPTED CITIZEN IN WAR SERVICE IS PRIVATE PROPERTY TAKEN FOR PUBLIC USE UNDER THE PROVISIONS OF THE FIFTH AMENDMENT.

Under the present state of the pleadings the bare recital of this proposition is sufficient.

We took the bodies of our youth by conscription and sent them into combat. If they were wounded or otherwise disabled in such service, we took for a public use that much of their lives, and under the Fifth Amendment they have a constitutional right to just compensation.

That their bodies and their earning power are property and belong to them is conceded for the purposes of the motion to dismiss.

If this cause should be reversed, the respondent, by appropriate pleading, may put the allegations of the amended petition in issue, and the truth of these allegations must then be tried out.

Until then, however, we rest upon the facts as so admitted.

III.

AS A COROLLARY TO THE FOREGOING PROPOSITIONS OUR WAR DISABLED ARE ENTITLED TO THE DUE PROCESS OF LAW GUARANTEED BY THE BILL OF RIGHTS.

As we have already observed, the right to trial of

issues of law and of fact in independent courts, with all the incidents of due process, flows naturally from the obligation of the United States to its disabled defenders; so that any argument under this head is but an extension of the argument found in the preceding divisions of this brief.

However, we desire to stress the importance of due process of law and the part which independent courts play in democratic government.

The fight to escape controlled "courts", the mock, or "kangaroo" courts of controlled political bureaus, has continued sporadically through the centuries. The Star Chamber is an ancient example.

Among the grounds of complaint against the King of England contained in the Declaration of Independence of July 4th, 1776, we find the following:

> "He has obstructed the administration of justice, by refusing to assent to laws for establishing judiciary powers.
>
> "He has made judges *dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.*"

In the second complaint above noted we find described with deadly accuracy the status of the so-called judges of the Veterans Administration who pass finally upon the rights of our war disabled.

From the chief down they are dependent upon their political overlords for the "tenure of their offices," and "the amount and payment of their salaries."

As we have repeatedly said, no other class of our citizens than our war disabled veterans is deprived of the decent processes contemplated by the constitution in the determination of their vital rights. No other person than a disabled soldier is required to have his rights finally determined by the clerical employees of his debtor.

There is a presumption in the law that official duty has been performed. Usually that is probably the weakest presumption known to the law; but in the case of these bureau courts it is the most powerful presumption known to the law. These so-called "judges", political employees, are employed, *not to be independent*, but to carry out the wishes of their employers, or lose their jobs.

The theory upon which such procedure can be justified is the monarchistic theory of Congress, that we owe no obligation to our war disabled, and that when Congress in a burst of generosity provides for niggardly payments of charity to them it may clothe such provisions with humiliating and indecent conditions, upon the theory that "beggars cannot be choosers", and if denied participation in the benefits of such provisions by the political hirelings he cannot look to the courts for help, no matter how arbitrary nor how contrary to law such denial may be.

Assuming (without conceding) that such practice may be warranted under conditions where only incidental property or financial benefits are involved, to

apply such practices to the cases of disabled veterans whose very livelihood is at stake is contrary to every democratic principle.

> "*If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has just claim to well regulated liberty and the protection of personal rights.*" (Italics ours)
>
> U. S. vs. Lee,
> 16 Otto 196
> 27 L. ed. 171

If the lords of industry, labor, and the ordinary citizen, were denied their right to try out vital issues before independent tribunals, as are the disabled veterans, we would have rebellion.

Under our constitution the federal judiciary is the keeper of the fires of freedom—*the final bulwark of liberty.*

So long as that judiciary maintains its independence, is immune to considerations of expediency, to the arbitrary pressure of irresponsible political and financial interests, with a conscience attuned to the demands of justice, and interprets our constitution as a compact essentially designed to preserve and promote human rights, just so long is our democracy secure.

With such a judiciary to check the encroachments of the executive and the legislative branches, and to try issues arrising between the citizen and the government, *including those in which the disabled war veteran*

is a party, the declared objective of the constitution, "to establish justice," will be attained; but if the judiciary yields its prerogatives, and permits the political branches of government to make a football of the constitution, parcel out its benefits according to its political whims, we are in a sorry plight indeed.

IV.

IMMUNITY OF THE UNITED STATES FROM SUIT.

The statement that the United States cannot be sued without the consent of Congress has become as trite, and just as meaningless, as the old jingle, "A pint's a pound the world around." A pint of water weighs the same as a pint of mercury, according to this formula.

All limitations contained in the Bill of Rights are directed at Congress and the executive, and are intended to prevent the encroachment of the political branches of government upon the rights guaranteed by the constitution to the citizen. That is the sole purpose of the Bill of Rights.

It would be absurd to say that a citizen cannot sue the United States, if suit be necessary to enforce a constitutional provision adopted for his protection, without the consent of the legislative and executive, *the very agents such provision was designed to restrain.*

The people are the sovereign, and when the people through constitutional enactment extend certain rights and immunities to the individual citizen, there is the implied consent that these rights and immunities may

be enforced in any appropriate manner, by suit, if necessary.

The last proviso of the Fifth Amendment is the only provision of the constitution and its amendments which in the final analysis requires suit against the United States.

In this connection it is well to observe that that provision is solely and peculiarly designed as a limitation upon the power of Congress and the executive.

Under the constitution, by virtue of specific provisions, or as necessarily incident to powers specifically granted, Congress has the power to take all private property necessary for the national defense, *and has the power to pay for it.*

Prior to 1789, however, there was no specific provision *requiring* Congress to pay for private property taken for public use.

The sole purpose of the last clause in the Fifth Amendment was to *compel* payment for such property so taken.

It was also the purpose, in enacting the Bill of Rights, *to insure the equal distribution of its protection to all citizens similarly situated*, instead of leaving the rights guaranteed by the first ten amendments to be parcelled out by Congress as political largess, which has been the practice, in all ages, of political governments not restrained by a constitution and an independent judiciary.

Our government consists of three branches, operating under powers and under limitations prescribed by the constitution. They are, the legislative, the executive, and the judicial departments, each independent of the other.

The independent judiciary marks the difference between a democracy and a totalitarian state. The judiciary is the guardian of the rights guaranteed by the Bill of Rights to the individual citizen, and is the real bulwark of liberty.

Should the judiciary abdicate its prerogatives and disregard its sacred trust, and permit the legislative and the executive to encroach upon the rights guaranteed to the citizen by the constitution, we may as well burn the Bill of Rights as a meaningless gesture.

James Madison, frequently referred to as the "Father of the Constitution," a man who knew more of the real genius as well as the tangible structure of the constitution than any man who has followed him, said, in offering the first ten amendments to the First Congress:

> "If they are incorporated into the constitution, *independent courts of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the declaration of rights.*"

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To say that these "independent courts" must ask Congress and the executive branch for permission to

entertain a suit to resist "assumption of power in the legislative or executive," or "encroachment upon rights expressly stipulated for in the Declaration of Rights," such as the taking of private property without just compensation under the 5th Amendment, would be to say that these "independent courts of justice" are merely lackeys of the political branches of government. The adoption of these amendments, with such a construction, would be as futile as locking up a burglar and then giving him the key to the jail.

If such be the law, Congress, by repealing every law granting permission to sue the United States, including the Court of Claims Act, could take private property for public use at will and without compensation, and snap its fingers at the Fifth Amendment; a conclusion which shocks the intelligence of every understanding American.

To adopt some of the language of Justice Miller, upon the same point, in the case of

U. S. vs. Lee,
16 Otto 196,
27 L. ed. 171:

> "*If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has just claim to well regulated liberty and the protection of personal rights.*" (Italics ours)

In the volumes of loose language which has been used in discussing this question we find an almost universal oversight of the basic principles involved.

First: Only in cases of rights *created by an Act of Congress* may Congress deny due process of law and require rights claimed under such law to be tried by mock courts, set up within an administrative body, and presided over by political hirelings under instructions from and subject to the control of their political overlords.

Second: *Congress has no control whatsoever, by action or by non-action, over the enforcement of a right running directly from the constitution or one of its amendments to the citizen.*

As long as there is a federal judge appointed under the power given by Article III of the constitution, and there is a place for him to sit or stand, he has the power, and it is his duty, to hear the complaint of a citizen who has been denied a constitutional right.

Article III establishes our judicial system, and defines the primary jurisdiction of the Courts established under the authority of that article.

Section 2 says that "the judicial power *shall* extend to all cases, in law and equity, *arising under this constitution*, * * * * to *controversies in which the United States shall be a party*", etc.

This section fixes the jurisdiction of the federal courts of general jurisdiction, and these powers cannot be subtracted from by Congress or the executive or both. When the federal trial and intermediate appellate courts were provided for by law, their jurisdiction was

fixed by the constitution. Congress might define, and perhaps enlarge in the interests of justice or of good government, *but it cannot restrict the jurisdiction fixed by the provisions of Article III.*

Any other construction would make of Congress the supreme power of government—a sovereign, and the citizen a subject. The judicial branch would be reduced to the role of an appendage of this political oligarchy.

The bare statement of this difference between the power of Congress in prescribing process for rights initiated by its own acts, and its lack of power to control the enjoyment by the citizen of rights guaranteed directly to him by the constitution, and its lack of constitutional power to prevent the courts from entertaining suits under these constitutional provisions, makes it unnecessary to review the mulitude of decisions affecting the first class of cases.

We will confine our discussion mainly to two decisions of the Supreme Court of the United States which establish the principle involved in the second proposition, that no action or non-action by Congress can deprive the courts of jurisdiction to try any case arising directly under the constitution or any of its amendments.

The first case is that of

U. S. vs. Lee
16 Otto 196
27 L. ed. 171

Briefly stated, the facts in that case were these:

Lee sued Kaufman and Strong and others, in the Virginia Court, to recover land known as the Arlington Estate, upon which the United States had established a fort and a cemetery. Kaufman and Strong were the agents of the government and occupied the land for the government. The action was in ejectment.

The case was later removed into the Circuit Court of the United States. After such removal the United States Attorney General filed in the proceeding a paper in which he stated that the land in controversy was

> "*occupied and possessed by the United States through its officers and agents, charged in behalf of the government of the United States with the control of the property, and who are in the actual possession thereof, as public property of the United States, for public uses, in the exercise of their sovereign and constitutional powers, as a military station,* and as a national cemetery established for the burial of deceased soldiers and sailors." (Italics ours)

and moved the dismissal of the action for lack of jurisdiction.

The interest of the United States was thus squarely presented. The government must necessarily act through its officers and agents, and even if the United States had been named a defendant and a judgment had been entered against it by name, such judgment would have been enforced by the ejectment of these same agents.

The Circuit Court rendered judgment against Kaufman and Strong, thus ejecting the United States as effectually as though it had been a party defendant *ea nomine.*

The United States appealed to the Supreme Court, thereby making itself a party defendant as effectually as though it had originally been named a defendant.

Carson Inv. Co. vs. A. C. M. Co.,
26 Fed. (N.S.) 651

Certiorari denied
278 U. S. 635
73 L. ed. 551

Considering the question, "Could any action be maintained against the defendants for the possession of the land in controversy, *under the circumstances of the relation of that possession to the United States?*" Mr. Justice Miller went fully into the question of sovereign immunity from suit. The judgment was affirmed by the Supreme Court, which means that the officers of the government, *who were occupying the land for the government*, were ejected.

Justice Miller analyzed the sovereignty of the United States and showed the difference between the sovereignty of the King of England and the sovereignty of the people of the United States. After discussing the petition of right in England and the immunity of the King from suit before the petition of right was granted, he says:

> "What were the reasons which forbade that the King should be sued in his own court, and how do these reasons apply to the political body corporate which we call the United States of America? As regards the King, one reason given by the old judges was the absurdity of the King's sending a writ to himself to command the King to appear in the King's Court. No such reason exists in our government, as process runs in the name of the President and may be served on the Attorney-General. * * * * *Nor can it be said that the dignity of the Government is degraded by appearing as a defendant in the courts of its own creation, because it is constantly appearing as a party in such courts and submitting its rights, as against the citizens, to their judgment.*"

When the matter of delicacy is disposed of, as is done by the quoted language, the only visible purpose of immunity is the attempted evasion by Congress, a creature of the Constitution, of obligations deliberately guaranteed by the Constitution.

When the people, through direct constitutional enactment, acknowledge obligations, every rule of logic and of decency, and every principle of democracy force the conclusion that they intended to pay their debts; and no lesser power than the people themselves has the right to put the people in the position of a common dead beat —of repudiating the obligations they have thus deliberately assumed.

Mr. Justice Miller further says:

> "As we have no person in this government who exercises supreme executive power or performs the

public duties of a sovereign, *it is difficult to see on what solid foundation of principle the exemption from liability to suit rests. * * * * The principle has never been discussed or the reasons for it given, but it has always been treated as an established doctrine.*"

"A pint's a pound," etc.

The Court, on page 177 of the Lawyer's Edition, discusses the situation in England and then says:

> "Under our system the *people*, who are there called *subjects*, are the sovereign. Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of a monarch. The citizen here knows no such person, however near to those in power or however powerful himself, to whom he need yield the rights which the law secures to him *when it is well administered.* When he, in one of the courts of competent jurisdiction, has established his right to property, there is no reason why deference to any person, natural or artificial, *not even the United States*, should prevent him from using the means which the law gives him, for the protection and enforcement of that right."

Again:

> "Conceding that the property in controversy in this case is devoted to a proper public use, and that this has been done by those having authority to establish a cemetery and a fort, the verdict of the jury finds that it is and was the private property of the plaintiff, and was taken without any process of law and *without any compensation. Undoubtedly, those provisions of the Constitution are of that character which it is intended the courts*

shall enforce, when cases involving their operation and effect are brought before them. (See Madison's remarks, supra) The instances in which the life and liberty of the citizen have been protected by the judicial writ of habeas corpus are too familiar to need citation, and many of these cases, indeed almost all of them, *are those in which life or liberty was invaded by persons assuming to act under the authority of the Government.*

"If this constitutional provision is a sufficient authority for the court to interfere to rescue a prisoner from the hands of those holding him under the asserted authority of the Government, *what reason is there that the same courts shall not give remedy to the citizen whose property has been seized without due process of law and devoted to public use without just compensation?*

"Looking at the question upon principle, and apart from the authority of adjudged cases, we think it still clearer that this branch of the defense cannot be maintained. *It seems to be opposed to all the principles upon which the rights of the citizen, when brought in collision with the acts of the Government, must be determined. In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by officers of the Government,* professing to act in its name. There remains to him but the *alternative of resistance,* which may amount to crime. * * * *

"The defense stands here solely upon the absolute immunity from judicial inquiry of everyone who *asserts* authority from the executive branch of the Government, however clear it may be that the executive possessed no such power. *Not only*

that no such power is given, but that it is absolutely prohibited, both to the executive and the legislative, to deprive anyone of life, liberty or property without due process of law, *or to take private property without just compensation.*

"These provisions for the security of the rights of the citizen stand in the Constitution *in the same connection and upon the same ground, as they regard his liberty and his property. It cannot be denied that both were intended to be enforced by the judiciary as one of the departments of the Government established by that Constitution.*

* * * * *

"Shall it be said in the face of all this, *and of the acknowledged right of the judiciary to decide in proper cases, statutes which have been passed by both branches of Congress and approved by the President, to be unconstitutional,* that the courts cannot give remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the Government without any lawful authority, without any process of law and *without any compensation,* because the President has ordered it and his officers are in possession?

"If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has just claim to well regulated liberty and the protection of personal rights."

We have quoted at length from the decision in the Lee case because it is conclusive upon the proposition that an action may be maintained against the United

States if necessary to enforce a right flowing directly from the Constitution.

When the Supreme Court, upon the appeal of the United States, with an interest in the subject matter asserted in the case by the United States itself, entered judgment against the agents of the United States, it established the law of exemption as applied to suits to enforce a right flowing directly from the constitution, and established the principle that the Fifth Amendment necessarily carries the right to sue.

At the time the Lee case was decided, *Congress had not consented to suit upon an obligation arising under the Constitution,* and the decision in that case is conclusive upon the proposition that the consent of Congress was not necessary.

In this connection it is well to note that the broad statements of Mr. Justice Brewer in the case of

Schillinger vs. U. S.
155 U. S. 162
39 L. ed. 108

decided in 1894, seven years after the passage of the Tucker Act, at a time when claims arising under the constitution were included in the Court of Claims Act, were *obiter dicta*—entirely gratuitous. The only question presented in that case was whether the suit involved a tort, torts being excluded from the court of claims act.

The next case for consideration is that of

Great Falls Mfg. Co. vs. U. S.
112 U. S. 645
28 L. ed. 846

That case was decided three years before the passage of the Tucker Act which for the first time gave the Court of Claims jurisdiction of "claims arising under the constitution."

No act for the payment of the value of the property taken had been passed by Congress, but on the other hand the government tried to evade payment.

The main question was whether the property for the taking of which damages was sought had been taken by the government, or whether there had been a tortious taking by an agent of the government. The Court of Claims Act expressly excluded tort actions.

Having found that the property was taken by virtue of an act of Congress, the Court said:

> "In that view, we are of the opinion that the United States, having by its agents, proceeding under the authority of an act of Congress, taken the property of the claimant for a public use, is under an obligation, *imposed by the constitution*, to make compensation."

Judgment in favor of the Great Falls Manufacturing Company was affirmed.

That decision decides squarely the question presented in the instant case.

The Court of Claims Act did not empower the Court of Claims to entertain a suit "arising under the constitution"; so that the decision was that a suit upon a right arising under the constitution could be maintained without Congressional action.

The Court of Claims being a court of limited jurisdiction, the inclusion of claims arising under the constitution simply had the effect of enlarging the jurisdiction of that court, and is not to be taken as even a suggestion that anyone thought that consent to sue upon such a claim was necessary.

These two cases affirm the propositions:

1. That the United States may be sued upon a right arising directly from the constitution or any of its amendments, regardless of action or non-action by Congress, and

2. That Congress is bound by these constitutional provisions, and cannot parcel out the benefits of the Bill of Rights to suit its political whims—grant them to its favorites and deny them to those not in its favor; grant to the strong the right to sue the United States upon those provisions, and deny that privilege to the weak; grant those rights to the wealthy and deny them to those in straitened circumstances.

EPILOGUE

The term "patriotism" has been too often used as an excuse for the denial of any obligation to the human

wreckage of war.

In such use of the term it is assumed that the citizen who is fired with patriotic ardor to the extent that he goes into battle for his fellow citizens and loses limb or health as the result of such service has received his full reward in the satisfaction of this overpowering emotion, and is required to accept disability as a part of the price of such satisfaction; and that the nation which has benefitted by his service owes him no duty, but may let him die in the gutter of the country he has helped to save, without thereby doing violence to any legal obligation.

Whatever illusive color such excuse may have had in the days when our wars were fought by volunteers, it has no color in the light of modern conditions.

When we conscripted our virile manpower to fight this war we stood upon our constitutional right to *require* the bodily sacrifice of our young men in our defense, regardless of any patriotic urge; and we consequently assumed the corresponding obligation which all democratic societies owe to their individual members,—the obligation to compensate the citizen who is required to sacrifice for the common good beyond his proportionate share.

When a citizen, responding to this call, throws his body into the breach, abandons all personal interests and family ties, takes on the hazards, the hardships and the discomforts of military life in time of war, *he then and thereby satisfies all the demands of patriotism.*

If he is discharged from that service disabled, *at that moment there arises an immediate obligation on the part of his country to adequately compensate him for his disabilities, suffered by him in performing his patriotic duty, a duty which had been fully performed when he was discharged.*

No aspersions can be cast upon him or upon his patriotism if he insists that, after he has performed his patriotic duty, his country, the other party to the bargain, perform *its* constitutional duty to legally compensate him for his loss.

Under the conscription act there was a file of bayonets at his back to guarantee that *he* responded to this call of "patriotism"; and by every token,—reason, common decency, the principles of democracy, and the constitution itself,—he is entitled to the milder bayonets of due process of law for the enforcement of the "patriotic" duty of the home front.

In this case we are presenting for the first time in history the question of the right of a citizen disabled in military service in time of war to the benefits of the Constitution in defending which he lost his bodily integrity and his earning power.

We are standing squarely upon the constitution, which is our controlling authority, and we are thus spared the arduous and fruitless task of wading through a quagmire of decisions, none of which, when stripped of *obiter dicta* and limited to the facts in the respective cases, touches the exact question now before the court.

Some decisions which *have* decided the principles involved, and in which the facts required such rulings, are analyzed at length.

The obligation of this country under the general compact to compensate the citizen who has contributed more than his proportionate share is founded upon natural justice—common law—and the decisions of the highest courts.

Under the Fifth Amendment, which requires no interpretation, the taking of private property for public use gives rise to a right to recover just compensation. That bodily integrity and earning power are private property is conceded for the purposes of the motion to dismiss, and indeed cannot be gainsaid. It is the earning power of man which makes all insensate property fit for human use; it is the basis of recovery in every personal injury suit; it is recognized by the government in facilitating, as it is now doing, the recovery by American citizens for personal injury suffered at the hands of enemies while prisoners of war.

In short, anything which can be evaluated in terms of money is property within the meaning of the constitution.

Doubtless due to our unhappy presentation in the Court below, the District Judge seems to have missed the points we tried to make.

For example: We referred to the Dred Scott case and the 13th amendment as authority for the proposition that the human body and its earning power are

property, that they are susceptible of ownership, that the United States does not own the body of the citizen under the 13th Amendment, and that the citizen is the owner of his body and of his earning power.

We all know that one of the basic differences between the fascist state and a democracy is that the fascist state owns the body of the subject, and that the democracy does *not* own the body of the citizen.

We do not question the power or the duty of Congress to raise and equip armies for defense, but we do question the right of Congress or of our people to conscript our boys to fight a war without assuming responsibility to them for the damage done to their bodies and their earning power in our defense—a portion of their lives expended in a public use—the same as we are responsible to those who furnish equipment for our armies.

The opinion of the court below is pregnant with another thought; that these boys were just out fighting for themselves, and therefore should themselves assume responsibility for what happened to them.

If that is logic, then why wouldn't the same principle apply to the man who furnished the rifle and the bayonet and the ammunition the soldier used? Would he not be doing it for his own protection, and should he not furnish it for nothing? Or should the soldier be charged with the gun and the bayonet and the ammunition, used by him in exterminating Japs?

Also, who was fighting for the people who were going about their business as usual, furnishing no material and no service, living in peace and security?

We will not try to make sense out of this proposition.

If these boys owed the strange duty of throwing everything they had into the struggle, property, prospects, and their bodies, without obligation upon anybody to repay them for loss of earning power through disability, why didn't everybody in this country owe the same duty to contribute everything they had that could be used in defense, and without obligation? Each one, according to the theory of the lower court, was fighting for himself.

This is a strange doctrine to advance after the citizens who furnished material have been paid fabulous sums, not only the value of their property but a wide margin of profit.

It will doubtless be said that human property was not considered by the First Congress when it submitted the first ten amendments.

Neither did the constitutional convention of 1787 know, or even dream, that the interstate commerce clause of Article I would cover the migrations of the railroad train, the automobile, or the aeroplane, nor communication by telephone, telegraph, or radio; nor that the power of Congress to raise and supply armies would involve the machine gun, the flame thrower, or the atomic bomb.

Nor did they know that in the 20th century the United States would be regularly conscripting the bodies of all of our virile youth and sending them out into all the hellholes of the world to fight every form of savagery, or that the number of our war dead and disabled would at one time be nearly equal to the entire population of the colonies at the time the First Congress met.

However, we are not required to search the minds of the members of the first congress which submitted the first ten amendments, or of the state legislatures which ratified them, to ascertain the thoughts they entertained.

The only tangible evidence of what they meant is what they said. The general principles laid down in the ten amendments apply to whatever may at any time in our political, economic, or social progress come within their broad purpose, to safeguard and promote the personal rights of the citizen.

Changing thought, as well as changing conditions, have affected the application of constitutional provisions. Decisions of the Supreme Court are constantly being reversed to accommodate those changes.

One thing is certain. The first ten amendments are warmly human, and are designed to protect the individual citizen in his daily life.

A citizen is presumed to be entitled to the benefit of all the provisions of the Bill of Rights, and its express language is not to be warped, as Congress has warped not only the constitution but every decent principle of

law and natural justice, in order to defeat the right of the disabled citizen to its benefits.

This reference to Congress is not gratuitous. It is simply an interpretation of the Economy Act, the most shocking piece of legislation ever passed by a professedly decent legislative body.

Would any legislative body that even pretended to be guided by principles of justice and the constitution have attempted to wipe out the war risk insurance contracts under which thousands of disabled veterans who had paid in premiums and in blood, to "maintain the credit of the United States Government," without at the same time cancelling *all other* contract obligations of the government, including government bonds?

And would any other group of our people than the disabled veterans submit tamely to the denial of access to our courts in the trial of their right to live, and the commitment of all these rights to a political dictator, a term synonymous with "tyrant", with power to neutralize the benefit of any act of Congress? A dictator with power to neutralize the 20% increase of pensions recently voted, or any other increase which may hereafter be voted, by Congress—a convenient tool which makes it possible for Congress to make a bountiful gesture with the knowledge that it will be rendered innocuous by this politically controlled employee?

The current history of the Economy Act indicates the forces that were backing it. When we consider who must pay the heavy end of the cost of recompensing

our war disabled,—the interests who took the lion's share of the profits of war,—it is easy to understand why Congress attempts to make a disabled war veteran try to live like a white man on $38.07 per month and raise a family (see Administrator's report for year ending June 30, 1945), when everyone knows that in this country no man can live and support a family and give his children an opportunity to grow up *not* underprivileged on less than $200.00 per month.

The gist of it all is that when a war is upon us we insist that we can't defend ourselves and on bended knee beseech the youth of America, from 16 years up to save us, and by the time the last gun is fired we are ready to brush them off, *tell them they were just out fighting for themselves,* deny them everything we willingly give to the profiteer, the criminal, the harlot, *due process of law,* make them practically men without a country, all to save ourselves from our obligation which arises from their payment of the real price of liberty, *the cost to them,* in life, limb and health.

"Oh, Liberty! What crimes are committed in thy name!"

Again we say, we are not waving the flag. We are just waving a million bloody uniforms.

The denial of the right to the trial of issues before an independent tribunal is not merely an academic proposition. The acquisition of that right has cost untold bloodshed; it is the essence of liberty.

Why does Congress so willingly give everyone in the world, but the disabled soldier,—the profiteer, labor, aliens, even the harlot,—the right to trial before tribunals not controlled by their debtors?

Because these interests represent power, while the disabled veteran who is getting the worst of the deal is relatively weak. Congress knows that if they were admitted to the courts they would get justice, and that is not what Congress wants. It would cost more money; and they want to keep political control of the rights of the disabled veteran so that they can cut him off whenever the time seems right.

The history of war risk insurance suits shows that but a small percentage of those suits were lost in court, and every one had been denied by the Veterans Administration.

It is an insult to every decent American that these boys, who, as have the boys of previous generations, have saved our lives, our liberties, and our property, are not accorded greater rights than the ordinary citizen, instead of being placed in the lowest category of human beings, denied *every* constitutional right and decent process of law when their whole future is tied up in the matter of just compensation for the lost earning power which was their only guaranty of an honorable livelihood.

The theory of non-liability, of mendicancy, is based upon the assumption that any man who will do the dirty, hard, and dangerous fighting for his country is

necessarily a person of low character, not fit to enter a court of justice, or to enjoy any of the decent processes which are freely made available to Yamashita, the Tiger of Malaya, and to the harlot.

It may be said that many of our remarks are beside the issue.

Would any self-respecting court undertake to adjudicate rights in the grocery business without acquiring some knowledge of the grocery business?

Has any court the right to try out the constitutional and vital rights of three million war disabled men without acquainting itself somewhat with the conditions which surround them, and the evils resulting from the denial of constitutional rights?

———

We submit that the judgment of the lower court should be reversed with instructions to the lower court to overrule the motion to dismiss in its entirety.

Respectfully,

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Attorneys for Appellant.

Note:

I assume sole responsibility for any statements in this brief which may shock the Court.

C. E. PEW
Of Counsel.